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FCC - MAIL ROOM

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November 24, 1993

William F. Caton, Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N. W.  
Washington, D. C. 20554

RE: MM Docket No. 92-266

Dear Secretary Caton:

Enclosed please find an original and five copies of The Attorney General of the State of New York's Statement in Support of the Petition for Reconsideration filed by the New York Telephone Company and New England Telephone and Telegraph Company on October 4, 1993.

I can be reached on (212) 416-8821 if there are any questions.

Very truly yours,

David O. Ward, Esq.  
Assistant Attorney General

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In the Matter of

FCC - MAIL ROOM

Implementation of Sections of  
the Cable Television Consumer  
Protection and Competition Act  
of 1992

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MM Docket No. 92-266

Rate Regulation

Statement in Support of  
Petition for Reconsideration

The Attorney General of the State of New York respectfully submits the following statement in support of the Petition for Reconsideration filed by the New York Telephone Company and New England Telephone and Telegraph Company on October 4, 1993. This submission includes points for the Commission's consideration that are in addition to those submitted by the New York Telephone Company and the New England Telephone Company.

In the Report and Order ("Report and Order") in the proceeding captioned Implementation of Sections of the Cable Television Consumer Protection and Competition Act, FCC 93-177, MM Docket 92-266, this Commission found that "current rates for cable systems not subject to effective competition reflect [their] pervasive market power." Report and Order, para. 14. Consequently, this Commission concluded that its "initial effort to regulate rates for cable service ... will generally lead to significant reductions from current levels for most cable systems." Report and Order, para. 15.

However, in lieu of the fact that the Commission's initial effort did not yield the desired results, this Commission

prudently left the door open for revisions by declaring "We anticipate that the regulations we adopt today will change over time. In accordance with the Statute, we will review and monitor the effect of our initial rate regulations on the cable industry and consumers, and refine and improve our rules as necessary." Report and Order, para. 10. This Commission repeated this policy in the First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, FCC 93-428, MM Docket 92-266, at note 7. Pursuant to these invitations, the New York State Attorney General, as an advocate for consumers in the State, reserves the right to provide the Commission with additional facts reflecting the effects of its regulations upon the cable industry and consumers within the State as they become available.

The New York State Department of Law, Antitrust Bureau, and representatives from six other State Attorneys General conducted a multistate investigation of the cable television monopolies over the past five years. The investigation resulted in consent decrees between the Attorneys General of forty-five States and the District of Columbia, and the largest cable Multiple System Operator ("MSO") companies in the country. While the joint Federal-State investigation with the Department of Justice focused mainly on the problems of program access for alternative distribution technologies, New York and the other six investigating States also examined cable pricing and monitored the development of the FCC regulations in MM Docket 92-266.

Congress and American Consumers expected an across-the-board rate reduction in cable rates when the 1992 Cable Act was passed. Unfortunately, the regulations that implemented the Cable Act actually caused rates to increase in approximately one-third of all American cable households. Those rate increases fell heavily on basic tier-only subscribers. Consumers of basic tier services include those subscribers who cannot get television reception any other way than through their local cable operator, but who cannot afford premium services. Plain fairness should lead the Commission to change those rules that raise rates for consumers who can least afford higher cable prices. As the FCC grapples with the problems of crafting regulations with across-the-board rate reductions for all cable consumers, we believe there are at least two ways in which the current regulations could be improved.

1. Eliminate "Tier Neutral" Rates. One suggestion is to drop the "tier-neutral" approach used to develop "benchmark" rates. Current rules call for the prices of channels in the basic service tier to be averaged with the programming services offered on other tiers. As you know, the Commission's rules recognize only a price-per-channel of the entire cable system, regardless of the tier structures present in cable system programming offerings. Report and Order, ¶¶ 205-207. Benchmark prices for programming channels in the basic tier were also incorporated by the Commission into this tier-neutral approach. Report and Order, ¶ 171. Thus, for the purposes of establishing

prices per channel, the Commission does not recognize any difference between the basic and the other programming tiers.

However, basic tiers are largely composed of over-the-air broadcast programming channels which generally cost cable operators nothing. Therefore, the averaging of programming prices under the "tier-neutral" approach simply forces basic service tier programming channels, which include the free broadcast channels, to absorb a portion of the price for the non-basic cable programming service channels. By averaging prices under the "tier-neutral" method, the Commission only succeeded in shifting costs from other programming services onto basic tier service customers.

Similarly, the "benchmark" rates established by the Commission are based primarily on the average difference in prices between cable systems facing competition, and those that do not. As such, these benchmark rates fail to recognize that much of the cable programming in the nation is also owned by cable operators. Because of this vertical integration, MSOs may charge substantially more to their competitors than they charge to their own affiliates for the same programming. Thus, the 10% reduction reflected in the benchmark rates adopted by the Commission is too low because it fails to account for the discriminatory pricing practices of vertically-integrated MSOs.

The strongest evidence that the 10% benchmark is too low is its comparison with the Consumer Price Index ("CPI"). Cable

price increases were triple the rate of increase in the CPI between 1986 and 1992, when the Cable Act was passed. These increases are proof that further rate reductions are warranted.

2. Allocate Customer Premises Equipment Costs to Beneficiaries. Another suggestion is to adopt rules that allocate customer premises equipment costs to MSOs and their "high-end" customers. MSOs prefer the expensive "fully-addressable converter" technology because it has the potential to reduce their operating costs. This technology permits central MSO control over program selection by household, eliminates the need for service calls and permits the sale of additional products such as pay-per-view services. While many subscribers may need an addressable converter, basic tier-only subscribers do not, and they should not be charged for one. The Commission should therefore allocate the costs of such customer premises equipment to its beneficiaries, namely the cable operators themselves and those consumers who buy premium services requiring fully-addressable technology.

Finally, it is essential that any decrease in cable rates for basic customers not come at the expense of the modest reductions enjoyed by "high end" cable users. The Commission's own competition study and the aforementioned CPI comparison provide more than enough evidence to justify the adoption of this position.

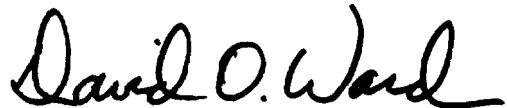
We look forward to working with the Commission and the new Cable Division to achieve success in the next round of rulemaking.

Respectfully Submitted,



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I, David O. Ward, hereby certify that copies of the foregoing "Statement of the Attorney General" have been mailed by first class United States mail, postage prepaid, this 24th day of November, 1993, to the following parties of record listed on the attached pages.



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